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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,889	04/14/2004	Toby Wexler	20040414	7321

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/824,889	Applicant(s) WEXLER, TOBY	
	Examiner Kimberly S. Smith	Art Unit 3644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 07/06/06 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

- the representation of the Appellant is improperly listed under Related Appeals and Interferences
- a listing of the claims and an explanation of the prosecution history are improperly included under Status of Claims which only requires the current status of claims (i.e. either cancelled, withdrawn, rejected, etc)
- the amendment dated 10/05/2005 should not be discussed under Status of Amendments as only those amendments and their status filed AFTER final should be entered in this subsection of the Appeal Brief. The amendment filed 10/05/05 was prior to Final rejection
- under Grounds for Rejection, the statement regarding whether claims are to be grouped or stand or fall together is not proper. The manner in which the arguments are presented, whether singularly or a generalized argument relating to a group of claims under a given rejection determines the grouping of the claims. Reference MPEP section 1205.02 with respect to 37 CFR 41.37 (c)(1)(vii)
- under the Arguments section, it is improper to question the Finality of the rejection nor the non-entering of an after final amendment. The propriety of a final rejection and the entering of after final amendments are appealable issues and not appealable issues and therefore should not be addressed in the Appeal Brief. The Applicant is directed to MPEP section 706.07(a) for a discussion on the timing of a proper final rejection.

SUPERVISOR
PRIMARY EXAMINER

